

EXHIBIT 3

Van Gelder, Amy (CHI)

From: Andrew Ellington <aellington@gilbertlitigators.com>
Sent: Wednesday, April 5, 2023 4:07 PM
To: Van Gelder, Amy (CHI)
Cc: Elpidio Villarreal; Blain, Jordan M (CHI); Steven Magnusson; Elpidio Villarreal; Stone, Dana M (NYC); 568_litigation@gilbertlitigators.com; 568 Litigation
Subject: [Ext] Re: Fwd: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Amy,

Thank you for your email. PD and I have reviewed your correspondence and we appreciate there appear to be several items on which we are moving toward agreement permitting Plaintiffs to withdraw their Motion to Compel as to certain RFPs. On a few other RFPs, we seek some clarification before we can move forward, and for a few others I believe we are currently at an impasse. Please see our comments in-line in red below.

Sincerely,

Andrew S. Ellington

Associate

Gilbert Litigators & Counselors, P.C.

Cell: 917.326.1842

aellington@gilbertlitigators.com

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----- Forwarded message -----

From: Van Gelder, Amy <Amy.VanGelder@skadden.com>
Date: Wed, Apr 5, 2023 at 2:15 AM
Subject: RE: Fwd: Henry v. Brown, et al. - Plaintiffs' Motion to Compel
To: Andrew Ellington <aellington@gilbertlitigators.com>, Elpidio Villarreal <pdvillarreal@gilbertlitigators.com>
Cc: Blain, Jordan M <Jordan.Blain@skadden.com>, Steven Magnusson <smagnusson@gilbertlitigators.com>, Elpidio Villarreal <elpidiovillarreal60@gmail.com>, Stone, Dana M <Dana.Stone@skadden.com>

Hi PD & Andrew,

On behalf of Columbia, I am following up on our April 3, 2023, meet and confer concerning plaintiffs' motion to compel. I believe we have resolved the issues raised in plaintiffs' motion, and request that you confirm by 12 pm CT on April 5 that plaintiffs are withdrawing the motion as to Columbia. As we discussed:

- Notwithstanding and without waiver of its objections, Columbia has run the negotiated search terms for First RFP Nos. 22, 62, 83, 126, 132, 150, and 157, and Second RFPs 1 and 4, and will produce responsive, non-privileged documents from the custodians currently designated by Columbia. This resolves the issues raised regarding these requests. **We appreciate this resolution and are willing to withdraw these RFPs (excluding 62, which will be discussed later) from the Motion to Compel provided Columbia agrees to produce these documents prior to April 30th. Please confirm this is acceptable to you.**
- Notwithstanding and without waiver of its objections, Columbia has run the negotiated search terms for First RFP No. 127 on the documents of the Admissions custodians currently designated by Columbia, and will produce responsive, non-privileged documents. Columbia offered this compromise because the negotiated terms hit on a high number of documents when run across all designated custodians and the request specifically calls for communications with Admissions. You stated that you would consider this and confirm it is acceptable. Regardless, because the parties have not reached impasse on this issue, we request you withdraw the motion so we can conclude our discussions on this request. **Unfortunately, we considered but do not accept this more limited response to this RFP. We do not agree to this limitation for this RFP.**
- Notwithstanding and without waiver of Columbia's objections, we agreed to determine on a go-get basis whether Columbia possesses documents sufficient to show the information called for by First RFP No. 53. This resolves the issues raised regarding this request. **We appreciate the attempt for resolution on this RFP and can agree to withdraw it from the Motion to Compel provided we receive confirmation that Columbia's production will address each subpart to RFP 53 and that Columbia agrees to produce these documents prior to April 30. Please confirm this is acceptable to you.**
- There are no negotiated search terms for First RFP Nos. 20, 23, 128, 129, and 131. To the extent documents responsive these requests are among the files of Columbia's currently designated custodians and hit on the negotiated search terms (many of which could encompass the subject matter of these requests), we are not withholding them on the basis of our objections to these requests. However, consistent with our objections and the Court's order concerning the Development and President's offices, we are not collecting materials from the Development and President's offices in response to these requests. We believe this is sufficient because the issue of whether Columbia is obligated to collect from Development and President's office sources has been deferred by the Court. **This is another issue where it appears we will not be able to reach agreement at this time. While Defendants are not required to identify and produce documents from custodians in the President's and Development Offices, that does not preclude production of documents from non-custodial sources within those offices and elsewhere. As you know, under the Federal Rules, Defendants have an independent obligation to produce responsive documents beyond simply applying a search terms to custodians. Plaintiffs need confirmation that the parties reserve their rights as to this issue, with the Plaintiffs' position being that Columbia must search for documents in the President's and Development Offices.**
- Columbia does not possess documents responsive to Second RFP No. 3. **Plaintiffs request some clarification on this before withdrawing as to this RFP. Please confirm Columbia's reasoning and what alternative process, if any, Columbia applies here.**
- **We discussed plaintiffs' Third RFPs for the first time on April 3.**
 - Notwithstanding and without waiver of its objections, Columbia will adapt the negotiated search terms for First RFP No. 22 to Third Request No. 11 and test those terms. Assuming the results are not overly burdensome, we will review the hits and produce responsive, non-privileged documents from the custodians currently designated by Columbia. This resolves the issues raised regarding this request. **We acknowledge this resolution and would be willing to withdraw as to this RFP if Columbia will confirm production related to this RFP will be complete prior to the current deadline for the Third set of RFPs.**

- o No search terms have been proposed or agreed for Third RFP No. 13 and, as you acknowledged, a conversation concerning this request is warranted. Because we have not substantively discussed this request, much less reached an impasse, this is not properly the subject of plaintiffs' motion. **We agree further discussion is likely warranted and timely for this RFP.**
- Finally, we discussed Columbia's School of General Studies. As you know, Columbia's October 28, 2022, disclosure of custodial and non-custodial data sources did not include General Studies custodial or non-custodial sources. This is because—as we have reiterated, including during our November 18, 2022, meet and confer and in our December 23, 2022, letter to you—General Studies never participated 568 Presidents Group or utilized the Consensus Methodology. Months ago, we offered to provide plaintiffs a stipulation or affidavit to this effect. During the last five months, plaintiffs have not raised or otherwise suggested that Columbia designate General Studies custodial or non-custodial sources. Nor have plaintiffs responded to our offer to provide a stipulation or affidavit. For the first time on April 3, you took issue with Columbia's custodial and non-custodial source designations, suggesting that General Studies is a proper document source so plaintiffs can discover whether that school is need blind. We explained our position that the designation of General Studies sources is disproportionate, both because General Studies students cannot be class members (they were unaffected by use of the Consensus Methodology) and because Columbia is not asserting the Exemption defense; thus, the burden of broadly collecting, reviewing, and producing from General Studies for this limited purpose greatly outweighs any marginal benefit to plaintiffs. You agreed to consider this position and revert. At any rate, Columbia's custodial and non-custodial source designation is not the subject of plaintiffs' pending motion to compel. As stated above, Columbia has run the agreed terms for First RFP No. 62—concerning non-traditional programs like General Studies—and will produce responsive, non-privileged documents from the files of its currently designated custodians. This resolves the issue raised in the motion. **We acknowledge the earlier agreement to run the search terms and produce responsive, non-privileged documents for RFP 62. However, we do seek clarification on a couple of points raised during our Meet and Confer on Monday. Is the School of General Studies need-blind? I believe you indicated as much on Monday, but we seek confirmation on this point. Additionally, you mentioned the School of General Studies either uses the Federal Methodology or the University Methodology, and only recently began to use it. Can you confirm which it is and when they began to use it? As we await clarification on these issues, we would like to reserve the right to seek production of documents from the School of General Studies at this time.**

Please let me know if you would like to discuss further. We look forward to your prompt response so we can hopefully avoid burdening the Court with needless briefing on these issues.

Thank you,

Amy

Amy Van Gelder
Partner

Skadden, Arps, Slate, Meagher & Flom LLP

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amy.vangelder@skadden.com

Skadden

From: Andrew Ellington <aellington@gilbertlitigators.com>
Sent: Monday, April 3, 2023 10:51 AM
To: Van Gelder, Amy (CHI) <Amy.VanGelder@skadden.com>
Cc: Elpidio Villarreal <pdvillarreal@gilbertlitigators.com>; Blain, Jordan M (CHI) <Jordan.Blain@skadden.com>; Steven Magnusson <smagnusson@gilbertlitigators.com>; Elpidio Villarreal <elpidiovillarreal60@gmail.com>
Subject: [Ext] Re: Fwd: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Amy,

If you could send one that would be great. Thanks,

Andrew S. Ellington

Associate

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On Mon, Apr 3, 2023 at 11:44 AM Van Gelder, Amy <Amy.VanGelder@skadden.com> wrote:

Yes, 4:30 ET works. Please let us know if you will send a meeting invitation or if we should. Thanks.

Amy Van Gelder
Partner

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From: Andrew Ellington <aellington@gilbertlitigators.com>
Sent: Monday, April 3, 2023 10:29 AM
To: Van Gelder, Amy (CHI) <Amy.VanGelder@skadden.com>
Cc: Elpidio Villarreal <pdvillarreal@gilbertlitigators.com>; Blain, Jordan M (CHI) <Jordan.Blain@skadden.com>; Steven Magnusson <smagnusson@gilbertlitigators.com>; Elpidio Villarreal <elpidiovillarreal60@gmail.com>
Subject: [Ext] Fwd: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Amy,

We can confirm that we are available for 4:30pm ET today. PD and I will be on this call. Please confirm this time still works for you. Thanks,

Andrew S. Ellington

Associate

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From: "Van Gelder, Amy" <Amy.VanGelder@skadden.com>
Date: April 2, 2023 at 11:04:13 AM EDT
To: Steven Magnusson <smagnusson@gilbertlitigators.com>
Cc: Elpidio Villarreal <pdvillarreal@gilbertlitigators.com>, "Blain, Jordan M" <Jordan.Blain@skadden.com>, Elpidio Villarreal <elpidiovillarreal60@gmail.com>
Subject: Re: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Could we do 4:30ET?

Amy Van Gelder

312.407.0903 (w)

312.420.9549 (c)

On Apr 1, 2023, at 9:08 PM, Steven Magnusson <smagnusson@gilbertlitigators.com> wrote:

Thanks, Amy. Can we do Monday at 4:00 ET?

Steven Magnusson

Senior Associate

Gilbert Litigators & Counselors, P.C.

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From: Van Gelder, Amy <Amy.VanGelder@skadden.com>

Sent: Friday, March 31, 2023 1:29 PM

To: 'smagnusson@gilbertlitigators.com' <smagnusson@gilbertlitigators.com>; 'Elpidio Villarreal' <pdvillarreal@gilbertlitigators.com>

Cc: Blain, Jordan M <Jordan.Blain@skadden.com>; 'Elpidio Villarreal' <elpidiovillarreal60@gmail.com>

Subject: RE: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Hi PD & Steve,

I am following up on my correspondence from earlier this week to see if we can schedule a meet and confer for Monday, ahead of defendants' deadline to respond to plaintiffs' motion to compel. I think a conversation would help us eliminate or at least materially reduce any remaining areas of dispute as to Columbia. I am available 10:30-1pm CT or after 3:30 CT Monday if there is a time in those windows that could work for you. Thanks.

Amy Van Gelder
Partner

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From: Van Gelder, Amy (CHI)
Sent: Wednesday, March 29, 2023 10:22 AM
To: 'Steven Magnusson' <smagnusson@gilbertlitigators.com>; 'Elpidio Villarreal' <pdvillarreal@gilbertlitigators.com>
Cc: Carbone_Defs_Service@listserv.whitecase.com; 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com
Subject: Henry v. Brown, et al. - Plaintiffs' Motion to Compel

Dear PD & Steve,

On behalf of Columbia, please see the attached correspondence concerning Plaintiffs' March 21 motion to compel. We request a meet and confer as soon as possible this week to resolve any outstanding issues. Please let me know when would be convenient for a call.

Thanks,

Amy

Amy Van Gelder
Partner

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